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## **Judicial-Legal reforms in Azerbaijan. Independent judiciary -as a barrier to corruption**

Countries experiences in the prevention of corruption are various and depend on a large number of interrelated factors. included among these factors, are legal, social, and political conditions, the level of economic development, and the activity of public administration agencies.

To carry out a programme on preventing and fighting corruption, an effective and independent judiciary system which uses every possible means to prosecute persons who have committed crimes of corruption is extremely important.

The role of courts in preventing corruption is not limited by the mentioned objective. Judicial control exercised by law enforcement bodies which infringe upon basic human rights, and the probability of abuses by these law enforcement bodies are important factors to consider.

An independent judiciary is the means to limit the opportunities of abuses by state institutions.

Furthermore, economic reforms constitute a threat to justice in countries which are in the transition period of their development, if private **businesses** develop without appropriate legal principles and without a judiciary system able to effectively protect private property, control the fulfilment of contracts, protect rights of economic subjects, create stable conditions for activities of local and foreign investors, and assist the formation of market relations.

The Constitution of Azerbaijan, adopted in 1995, declares, that judges are independent, obey only the Constitution and laws, and are irremovable during their term of office.

After the determination of state priorities within the framework of judicial-legal reforms, certain Laws were adopted, namely, “On Constitutional Court” and “On courts and judges”, which guaranteed the independence of judges by ensuring their depolitization, irremovability and immunity. Laws were established regarding the appointment of judges on a competitive basis, the process of bringing judges to disciplinary responsibility, and the removal from office, as well as facilitating the establishment of material and social facilities. Such guarantees of independence are an efficient factor in the struggle against corruption in judicial bodies.

The programme of reforms in the judiciary system is being actualized with the help of World Bank in the creation of new courts, implementation of appeal and cassation procedures, and the rejection of the prosecutor’s control of judiciary (which was a soviet heritage). However, this process is hampered by a number of factors, in particular, by inadequacy of funding, necessity of the adoption of laws, and the reorganisation of certain institutions (such as prosecutor office) and so on.

We are currently in the process of forming a new judicial system, which will contain a number of components to satisfy the following objectives: creation of more transparent government, organisation of courts, implementation of more effective rules of payment, creation of new stimulus and funding, and so on. The possibility of use of alternative mechanisms of funding to prevent abuses by officials more effectively is also under consideration.

At the same time, if the system of justice is not secured from corruption in itself than consequences are fatal. If, so to say, ‘quiet’ corruption penetrates into the judicial system itself, then the principles of independence, impartiality and fairness will be called into question.

One of the main objectives of the preventive measures against corruption implemented in our state is to promote understanding of moral duties towards society, and facilitate conduct which complies with their high status.

With this purpose in mind, President Heydar Aliyev has formed the Judicial-Legal Council which has the principal duty of selecting candidates to the position of judge in accordance with transparent procedures.

Certain standards and criteria have been established and are used, including holding the of impartial tests for the selection of judges. The procedures of publicity, of open proceeding, of information from civillians concerning the quality of work of law enforcement bodies, the wide distribution

of results of such polls, and the activities of media play an important role in promoting the integrity of, and preventing corruption among officials of law enforcement and security forces.

In fighting corruption, controlling admissibility of court proceeding, illegal influence, threats and interference in activity of courts are crucial. Thus, the heritage of the so called “telephone law”, which was widely used in judicial system of Soviet period, was abolished by law and the criminal responsibility for these actions was established.

The Azerbaijan legislation provides for the possibility of disciplinary punishment, dismissal from office in case of breach of judge ethics, or in case of conduct incompatible with the high status of judge. The Disciplinary Board of The Supreme Court has been created to consider disciplinary proceedings, as well as give consent to begin criminal prosecution, and arrest judges for committing crimes, including those connected with corruption.

Since 1990 the disciplinary sanctions have been used against 59 judges, 12 judges were dismissed from office – in 2 cases for commercial activities incompatible with laws.

Practice shows, that corruption of law enforcement bodies occurs most when these bodies enjoy rights connected with the private life of citizens. Extortion of bribe is essentially blackmail in itself, connected with the threat to use negative information received as a result of investigation activities.

Control in this sphere may be intra- or extrainstitutional. Analysis of the practice of justice and security forces in Azerbaijan allows a conclusion to be drawn, which is that institutional control is not always effective because it is not possible for any law enforcement body to be fully unbiased in these questions, and to disregard the possibility of undermining the current law enforcement body system on a whole.

Since there is no vested interest involved, extrainstitutional control promotes fair, impartial disclosing of facts regarding the abuses by officials of law enforcement bodies.

But at the same time extrainstitutional control can not match the judicial control in efficiency. After the achievement of independence substantial activity has been pursued to establish judicial control in Azerbaijan. The parliament at the present time is considering the draft law “On investigative activities”, which contains a number of innovations in the sphere of judicial control, including

those connected to the problem of preventing corruption in law enforcement bodies. The sanction of court, which needs to be based on sufficient facts, is necessary, in particular, for exercise of the powers, such as wiretapping, opening and inspecting correspondence, interception of information from electron coupling channels and other technical means, penetration into the dwelling, and shadowing.

We realise in our country, that independence of the judicial system is one of the main factors in deterring corruption and abuses. Reform of the judicial system aims to create independent courts, which are one of the most important elements of democracy.